

EES POLICY NO. 99-10-02 (Originally 85-03-004)	RE: Law Enforcement Custody and State Psychiatric Hospital Admissions
POLICY MEMO	KEESM: 8111.1 and 8112.4
FROM: Dennis Priest	OTHER:
DATE: Rev. 5-1-01 October 1, 1999 (Originally 5-21-85)	
Program(s): Medical	

Several issues have surfaced regarding Medicaid eligible age 21 and 65 and older who are admitted to State psychiatric hospitals under court order and apply for assistance. Of particular concern was how to delineate those admittances where law enforcement custody is a factor, thus resulting in ineligibility per KEESM 8111.1.

Our policy in this area has been based on HCFA's interpretation of the Medicaid regulation which prohibits the availability of FFP for services provided to individuals who are inmates of public institutions. Individuals who are under the jurisdiction of the criminal justice system are deemed to be inmates of public institutions as they are normally held in jails or other penal facilities pending court appearances, trials, and sentencing as well as after conviction, if guilty. It does not matter whether the individual has merely been accused of a crime or convicted and sentenced. The deciding factor is his or her incarceration in a public institution. The only permitted exceptions are for individuals on probation, parole, or bail and those who have been pardoned and released.

Staff in some areas have interpreted the provisions of KEESM 8111.1 to deny medical assistance to potentially eligible persons who enter the three State psychiatric hospitals under any court order. Part of the confusion centers around the fact that a great number of admittances occur under the jurisdiction of the District Court. Some result from civil procedures such as those falling under the heading of "protective custody" while others are indeed criminal in nature such as pre-sentence evaluations and determinations of competency to stand trial. What needs to be clarified is the fact that eligibility is allowable for persons admitted under a civil court order. Although a law enforcement official may have been involved in the detainment process, the person subsequently falls under the protective custody of the court. Those admissions which fall under the Kansas Code of Criminal Procedure are to be generally viewed as falling under the care, custody, and control of law enforcement officials and, thus, would result in ineligibility. This distinction is extremely important as it appears we have wrongly denied Medicaid to otherwise eligible persons in a number of instances and have therefore lost out on FFP coverage for their cost of care.

On the reverse side is a complete listing of patients commitment status options used by the state hospitals which identifies the type of admittance and the state statute it falls under for

both the adult and juvenile criminal justice system. The right hand column denotes those admittances where Medicaid eligibility would be denied.

**STATE PSYCHIATRIC HOSPITALS
PATIENT COMMITMENT STATUS OPTIONS**

STATUS STATUTE POTENTIAL MEDICAID ELIGIBILITY?		
STATUS	STATUTE	POTENTIAL MEDICAID ELIGIBILITY?
Referral to Determine Sanity of Defendant at Time Crime Allegedly Committed (M'Naghten rule)	KSA 22-3219	No
Competency Determination	KSA 22-3302	No
Incompetency Commitment (evaluation and treatment)	KSA 22-3303	No
Acquittal because of Insanity	KSA 22-3428	Yes
Mental Exam - Pre-sentence Investigation	KSA 22-3429 KSA 21-4603	No
In Lieu of Sentence Commitment	KSA 22-3430	No
Evaluation of Psychological or Emotional Development or Needs	KSA 38-1514 (a)	Yes
Examination - Respondent claiming Insanity	KSA 38-1623	No
Competency Determination	KSA 38-1637	No
Incompetency Commitment (Evaluation and Treatment)	KSA 38-1638	No
Not responsible because of insanity	KSA 38-1655	Yes
Predisposition Evaluation	KSA 38-1662 (a)	No
Commitment to State Youth Center	KSA 38-1671	No
Voluntary	KSA 59-2949	Yes
Emergency	KSA 59-2953	Yes
Under of Protective Custody (issued without Probable Cause Hearing)	KSA 59-2958 KSA 59-2954	Yes
Order of Protective Custody	KSA 59-2959	Yes
Order for Mental Evaluation	KSA 59-2961 59-2962	Yes
Order-for Treatment	KSA 59-2966	Yes
Order of Referral for Short Term Treatment	KSA 59-2918	Yes
Order for Mental Evaluation (Guardianship/Conservatorship)	KSA 59-3010	Yes
Voluntary	KSA 59-29b49	Yes

Emergency	KSA 59-29b53	Yes
Order of Protective Custody	KSA 59-29b54 59-29b58 59-29b59	Yes
Order for Alcoholic Evaluation	KSA 59-29b61 59-29b62	Yes
Order for Care or Treatment	KSA 59-29b66	Yes
Order of Continuance and Referral	KSA 59-29b64	Yes
Administrative Transfer Institutional	KSA 75-3328	Yes
Minute of Transfer (observation and diagnosis)	KSA 75-5209	No
Sexual Predators	KSA 59-29a07	Yes

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